

1 DANIEL M. PETROCELLI (S.B. # 97802)

2 detrocelli@omm.com

3 O'MELVENY & MYERS LLP

4 1999 Avenue of the Stars, 8th Floor

5 Los Angeles, California 90067-6035

6 Telephone: (310) 553-6700

7 Facsimile: (310) 246-6799

8 CATALINA VERGARA (S.B. # 223775)

9 cvergara@omm.com

10 O'MELVENY & MYERS LLP

11 400 South Hope Street, 18th Floor

12 Los Angeles, California 90071

13 Telephone: (213) 430-6000

14 Facsimile: (213) 430-6400

15 *Attorneys for Defendants*

16 The Azoff Company Holdings LLC and

17 The Azoff Company LLC

18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA**

20 KELLYE CROFT,

21 Plaintiff,

22 vs.

23 JAMES DOLAN, HARVEY
24 WEINSTEIN, JD & THE
25 STRAIGHT SHOT, LLC, THE
26 AZOFF COMPANY HOLDINGS
27 LLC f/k/a AZOFF MUSIC
28 MANAGEMENT, LLC, THE
AZOFF COMPANY LLC f/k/a
AZOFF MSG ENTERTAINMENT,
LLC, DOE CORPORATION 1-10,

Defendant.

Case No. 2:24-cv-00371

**DEFENDANTS AZOFF ENTITIES'
NOTICE OF MOTION AND MOTION
TO DISMISS SECOND AMENDED
COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6)**

Date: August 19, 2024

Time: 1:30pm

Location: Courtroom 9A

Judge: Hon. Percy Anderson

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on August 19, 2024, at 1:30 p.m., or as soon
3 thereafter as counsel may be heard by the above-entitled court, located in Courtroom
4 9A at First Street Courthouse, 350 West 1st Street, Los Angeles, California 90012,
5 Defendants The Azoff Company Holdings LLC and The Azoff Company LLC
6 (collectively, the “Azoff Entities”) will and hereby do move, pursuant to Rule
7 12(b)(6) of the Federal Rules of Civil Procedure, for dismissal of Plaintiff’s first
8 cause of action against the Azoff Entities.

9 This motion is based on the ground that Plaintiff’s only claim for relief
10 against the Azoff Entities, for allegedly participating in a sex trafficking venture in
11 violation of the federal Trafficking Victims Protection Act, 18 U.S.C. § 1591, fails
12 to state a viable claim. Even after amending her Complaint a second time, Plaintiff
13 has failed to allege any facts that, taken as true, would satisfy the required elements
14 of the claim—namely, that the Azoff Entities knew of, participated in, or benefitted
15 from any sex trafficking venture.

16 The Azoff Entities’ motion is based on this Notice of Motion and
17 accompanying Memorandum of Points and Authorities; the concurrently filed
18 Proposed Order; all other briefing in this case; and such additional submissions and
19 argument, including any reply briefing, as may be presented at or before the hearing
20 on this motion. The motion is made following the conference of counsel required
21 by Local Rule 7-3, which took place via videoconference on July 15, 2024.

22
23 DATED: July 22, 2024

O’MELVENY & MYERS LLP

24
25 By: /s/ Daniel M. Petrocelli

Daniel M. Petrocelli

26 Attorneys for Defendants Azoff Entities
27
28

1 DANIEL M. PETROCELLI (S.B. # 97802)

2 detrocelli@omm.com

3 O'MELVENY & MYERS LLP

4 1999 Avenue of the Stars, 8th Floor

5 Los Angeles, California 90067-6035

6 Telephone: (310) 553-6700

7 Facsimile: (310) 246-6799

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10 O'MELVENY & MYERS LLP

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Defendant.

Case No. 2:24-cv-00371

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS AZOFF ENTITIES'
MOTION TO DISMISS SECOND
AMENDED COMPLAINT PURSUANT
TO FEDERAL RULE OF CIVIL
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1 I. INTRODUCTION

2 No matter how many times Plaintiff may try, there is no truthful way to state
3 a plausible claim against the Azoff Entities under the federal Trafficking Victims
4 Protection Reauthorization Act (“TVPRA”), 18 U.S.C. § 1591. The simple,
5 inescapable conclusion is that the Azoff Entities did not engage in sex trafficking,
6 do not belong in this lawsuit, and should not be further subjected to it. Plaintiff’s
7 sole cause of action against them should therefore be dismissed with prejudice.

8 In dismissing this claim from Plaintiff’s First Amended Complaint (“FAC”),
9 the Court found Plaintiff’s allegations insufficient on three separate, independent
10 grounds. First, the Court found the FAC alleged no facts to satisfy the “commercial
11 sex act” element of a direct liability claim under the TVPRA. In particular, the FAC
12 contained no allegations of a causal connection between any payments Plaintiff
13 allegedly received on the Los Angeles leg of the Eagles tour in January 2014 and
14 her alleged sexual activities with co-defendant James Dolan during the tour. Dkt. 63
15 at 8. Second, the Court found the FAC did not state a claim for beneficiary liability
16 under the TVPRA because there were no allegations to support the inference that the
17 Azoff Entities knew or should have known that Plaintiff was allegedly being sex
18 trafficked to Los Angeles. *Id.* at 9. Finally, the Court concluded the FAC contained
19 no facts to support Plaintiff’s theory that the Azoff Entities were vicariously liable
20 under the TVPRA for the actions of co-defendant James Dolan. *Id.* at 9–10.

21 Plaintiff has added *nothing* to her Second Amended Complaint (“SAC”), Dkt.
22 65, to remedy these fatal pleading defects. The new allegations are simply
23 variations of allegations the Court previously found insufficient or are
24 impermissibly conclusory. Specifically:

- 25 • In an attempt to allege a “commercial sex act,” Plaintiff embellishes prior
26 allegations that she received payment for her Los Angeles tour-related time
27 and travel expenses, and adds that Dolan promised her career opportunities.
28 SAC ¶¶ 39, 45, 65–66, 119. These do not cure the deficiency identified in

the Court’s dismissal order: the failure to allege that any of these alleged benefits were *causally related* to Plaintiff’s alleged sexual relations with Dolan. Dkt. 63 at 8.

- Next, to bolster her theory of beneficiary liability, Plaintiff alleges that, “[b]ecause Dolan or his band was paying for Ms. Croft’s presence on the Los Angeles tour stint, the agents and representatives of the Azoff Entities must have known that Ms. Croft’s presence was specifically requested by Dolan.” SAC ¶ 53. This, too, is not new information; Plaintiff previously alleged that her travel and lodging were paid for by Dolan and that the Azoff Entities knew as much. Amended Compl., Dkt. 48 (“FAC”) ¶¶ 48, 59. These allegations remain plainly insufficient to meet her burden to allege the Azoff Entities “had the requisite knowledge that Dolan was using fraud or coercion to obtain sex, which is a necessary element of an act in violation of the TVPRA.” Dkt. 63 at 9.
- Finally, to salvage her theory of vicarious liability, Plaintiff reiterates allegations that Dolan had “managerial discretion” over the joint venture with the Azoff Entities, SAC ¶¶ 122–25, and adds that Irving Azoff was “heavily reliant” on Dolan to “grow his influence in the music industry,” SAC ¶ 55. These conclusory allegations proceed on the wholly unsupported premise that Azoff, a long-time, legendary manager in the music industry, was somehow beholden to Dolan. But in any case, Plaintiff again has it exactly backwards: Ninth Circuit law requires her to allege that the Azoff Entities had control over *Dolan’s* actions, not the other way around.¹

¹ In addition to these defects, and as detailed in the Azoff Entities’ previous motion to dismiss, Dkt. 51, Plaintiff’s FAC failed to plausibly allege that the Azoff Entities participated in or benefitted from any sex trafficking scheme, *id.* at 9–13. Her claim thus also fails for the same reasons explained there.

1 In short, despite her further amendment, Plaintiff's SAC does not and cannot
 2 plead facts plausibly establishing a viable claim. The TVPRA claim against the
 3 Azoff Entities should accordingly be dismissed with prejudice.

4 **II. BACKGROUND**

5 The core factual allegations in Plaintiff's SAC remain essentially unchanged
 6 from her FAC. Plaintiff alleges the Azoff Entities asked her to come to California in
 7 late 2013 to work as a massage therapist for the January 2014 Los Angeles leg of the
 8 Eagles tour. SAC ¶ 47. She further contends the Azoff Entities arranged her flight
 9 to Los Angeles—which an email forwarded to her by Marc Robbins, purportedly an
 10 agent of the Azoff Entities, suggested would be paid by Dolan. *Id.* ¶ 48. She also
 11 claims the Azoff Entities, including Robbins, arranged for her transportation from
 12 the airport in Los Angeles, for her stay at The Peninsula Hotel in Beverly Hills, and
 13 for her transportation to The Forum (the concert venue where she performed her
 14 massage services). *Id.* ¶¶ 49–51, 58. According to Plaintiff, these arrangements
 15 were orchestrated by the Azoff Entities and Dolan—who allegedly helped finance
 16 the Eagles tour,² made monetary investments in the Azoff Entities, and opened for
 17 the Eagles with his band—because Dolan “wished to sexually exploit” Plaintiff on
 18 the tour. *Id.* ¶¶ 54, 56–57, 62. She concludes “[o]n information and belief,” and
 19 with no supporting facts, that the Azoff Entities “arranged for [Plaintiff] to be
 20 brought to California at Dolan's request” for the “purposes of engaging in unwanted
 21 sexual acts with Dolan.” *Id.* ¶ 62.

22 As in the FAC, Plaintiff again alleges Dolan “fraudulently coordinate[d]” a
 23 meeting between her and Harvey Weinstein, purportedly a close friend of Dolan's.
 24 *Id.* § IV.; *id.* ¶ 77. She alleges that, one evening, after allegedly going shopping and
 25 dinner with two “female assistants” from one of the Azoff Entities at Dolan's
 26

27 ² As the Azoff Entities previously noted, Dolan did not finance the Eagles tour—but
 28 the Court need not resolve this factual issue in ruling on this motion.

1 encouragement, Plaintiff was waiting for the elevator to return to her hotel room
 2 when Weinstein introduced himself to her. *Id.* ¶¶ 73–76. As she describes it, after
 3 Weinstein learned she was a massage therapist, he suggested he might have work
 4 opportunities for her and invited her to join him in his suite, which she agreed to do.
 5 *Id.* ¶¶ 78–81. Plaintiff claims Weinstein sexually assaulted her in the suite, and she
 6 was able to escape when Dolan called. *Id.* ¶¶ 82–100. The next day, she claims she
 7 felt “so physically and emotionally unwell” that she was unable to work, at which
 8 point Robbins purportedly sent a doctor to see her. *Id.* ¶ 105. Shortly thereafter, the
 9 Los Angeles leg of the Eagles tour ended, and the Azoff Entities arranged for
 10 Plaintiff’s return flight back to her home in Tennessee. *Id.* ¶ 107.

11 As noted above, most of the new allegations in Plaintiff’s SAC simply restate
 12 or add immaterial details to the same allegations the Court previously found
 13 insufficient. For example, consistent with her prior allegation that Dolan had
 14 “profound power over everyone involved in the venue and the tour,” *id.* ¶ 57,
 15 Plaintiff adds that Dolan “could control the Azoff Entities’ business decisions about
 16 the Eagles tour” and Dolan suggested that he could obtain more work opportunities
 17 for Plaintiff, such as on the European leg of the tour, *id.* ¶¶ 39, 45. And, as with her
 18 prior allegations that “Dolan was a critically important business partner for the
 19 Azoff Entities” given his monetary investments, *id.* ¶ 120, Plaintiff adds that the
 20 Azoff Entities “were heavily reliant on Dolan” to grow Irving Azoff’s “influence in
 21 the music industry,” *id.* ¶ 55.³

22
 23 ³ Plaintiff alleges that the 2014 business ventures with Dolan were “particularly
 24 important to Irving Azoff” because he was “restricted in his ability to engage in new
 25 artist management” by a non-compete agreement signed upon Azoff’s departure
 26 from Live Nation. *Id.* ¶ 55. Yet the very *Billboard* article that Plaintiff quotes in a
 27 footnote to this allegation dispels Plaintiff’s claim, making clear that the “non-
 28 compete constraints” were soon expiring and “wo[uld]n’t be a factor after 2014.”
Id. n.7 (quoting Waddell, Ray, “The \$300 Million Comeback: Irving Azoff Teams
 With MSG’s James Dolan to Create Intriguing Music Company,” *Billboard*,

1 Similarly, Plaintiff repeats her allegation that “[u]nlike the other tour stints,”
 2 she “was not housed at the same hotel as the [Eagles],” *id.* ¶ 58, and adds an
 3 immaterial allegation that on other tour legs she also “traveled and ate her meals”
 4 with the Eagles but did not do so on the Los Angeles leg, *id.* ¶ 59. And to her
 5 preexisting allegations that she was given ““venue pay”” by the Azoff Entities even
 6 though “[a]lmost no tour members” signed up for massages, *id.* ¶ 60–61, Plaintiff
 7 adds allegations that this ““venue pay”” was paid to her as \$700 in cash per day by
 8 an individual named John Dalton (purportedly an Azoff Entities accountant) and
 9 that she was also paid \$8,400 by Dolan’s tour manager—again, despite performing
 10 “almost no massages,” *id.* ¶¶ 65–66.

11 The remainder of Plaintiff’s new allegations in the SAC are likewise
 12 inconsequential. First, Plaintiff alleges that, because she received travel expenses,
 13 promises of future employment, and monetary payments, her purported sexual
 14 encounters with Dolan were “commercial sex acts.” *Id.* ¶ 119. Second, having
 15 previously alleged that Dolan was an “agent” of the Azoff Entities, *id.* ¶ 121,
 16 Plaintiff adds conclusory allegations that he “had significant managerial discretion”
 17 over “personnel matter[s]” and “acted in his capacity as an agent when he violated
 18 the Trafficking Victims Protection Act” by “arrang[ing] through the Azoff Entities
 19 to have [Plaintiff] transported to California,” making the Azoff Entities “vicariously
 20 liable for his conduct,” *id.* ¶¶ 122–25.

21 Entirely absent from these additions to Plaintiff’s SAC is anything that would
 22 remedy the pleading deficiencies previously identified by the Court. Hence, her
 23 TVPRA claim against the Azoff Entities remains insufficient as a matter of law.
 24
 25
 26

27 [https://www.billboard.com/music/music-news/the-300-million-comeback-irving-](https://www.billboard.com/music/music-news/the-300-million-comeback-irving-azoff-teams-with-msgs-james-dolan-to-5687155/)
 28 [azoff-teams-with-msgs-james-dolan-to-5687155/](https://www.billboard.com/music/music-news/the-300-million-comeback-irving-azoff-teams-with-msgs-james-dolan-to-5687155/)).

1 III. LEGAL STANDARD

2 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
 3 legal sufficiency of the plaintiff's claims. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199–
 4 1200 (9th Cir. 2003). Under Rule 12(b)(6), “a complaint must contain sufficient
 5 factual matter, accepted as true, to state a claim for relief that is plausible on its
 6 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). A
 7 complaint cannot survive a motion to dismiss if it merely “tenders naked assertion[s]
 8 devoid of further factual enhancement.” *Id.* “[A] formulaic recitation of the
 9 elements of a cause of action” is insufficient. *Bell Atlantic Corp. v. Twombly*, 550
 10 U.S. 544, 555 (2007). The court need not accept “allegations that are merely
 11 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell*
 12 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Thus, “a court
 13 considering a motion to dismiss can choose to begin by identifying pleadings that,
 14 because they are no more than conclusions, are not entitled to the assumption of
 15 truth.” *Iqbal*, 556 U.S. at 679. “[F]or a complaint to survive a motion to dismiss,
 16 the non-conclusory ‘factual content,’ and reasonable inferences from that content,
 17 must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S.*
 18 *Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678).

19 IV. ARGUMENT

20 As with previous versions of her complaint, Plaintiff brings her sole claim
 21 against the Azoff Entities under 18 U.S.C. § 1591, which imposes criminal penalties
 22 on those who directly traffick individuals, knowing or in reckless disregard of the
 23 fact that “force, threats of force, fraud, [or] coercion” will be used to cause the
 24 victim “to engage in a commercial sex act,” as well as those who participate in and
 25 benefit from such trafficking schemes. 18 U.S.C. §§ 1591(a), (b). Under 18 U.S.C.
 26 § 1595, victims of trafficking have a private right of action to sue both direct
 27 perpetrators of trafficking and anyone who “knowingly benefits, or attempts or
 28 conspires to benefit, financially or by receiving anything of value from participation

1 in a venture which that person knew or should have known has engaged in an act in
 2 violation of [the TVPRA].” 18 U.S.C. § 1595(a); *see also Ratha v. Phatthana*
 3 *Seafood Co.*, 35 F.4th 1159, 1175 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 491, 214
 4 L. Ed. 2d 280 (2022). To state a viable claim under Section 1595, Plaintiff must
 5 thus allege facts plausibly showing that the Azoff Entities knowingly benefitted
 6 from participation in a venture with Dolan that they knew or should have known
 7 involved sex trafficking. *See Acevedo v. eXp Realty, LLC*, 2024 WL 650189, at *16
 8 (C.D. Cal. Jan. 29, 2024).

9 As the Court explained, Plaintiff’s FAC “fail[ed] to allege an underlying
 10 commercial sex act,” “fail[ed] to plausibly allege that [the Azoff Entities] knew or
 11 should have known that Dolan was engaged in any sex trafficking scheme,” and
 12 failed to “sufficiently allege an agency or vicarious liability theory” through which
 13 the Azoff Entities would be liable for Dolan’s alleged acts. Dkt. 63 at 9–10.
 14 Plaintiff’s scant additions to the SAC do not remedy these deficiencies: it still fails
 15 to allege facts plausibly establishing a commercial sex act, that the Azoff Entities
 16 knew or had reason to know of any alleged sex trafficking that they participated in
 17 and benefitted from, or that they are vicariously liable.

18 **A. Plaintiff fails to allege any commercial sex act.**

19 Plaintiff’s FAC failed to plausibly allege a “commercial sex act,” a
 20 prerequisite for direct and beneficiary liability under the TVPRA. Dkt. 63 at 8–9. A
 21 “commercial sex act” is “any sex act on account of which anything of value is given
 22 to or received by any person.” 18 U.S.C. § 1591(e)(3); *Acevedo*, 2024 WL 650189,
 23 at *13. As the Court noted, despite Plaintiff’s allegations that her travel expenses
 24 were paid for and that she received “venue pay,” nothing showed a “causal
 25 connection” to “the sexual conduct Plaintiff alleges she was forced to engage in with
 26 Dolan.” Dkt. 63 at 8. Nor did Plaintiff allege any “direct statements or promises”
 27 of career advancement “to entice, lure or coerce her into a sexual relationship.” *Id.*
 28

1 Plaintiff's SAC fares no better. First, Plaintiff adds new allegations with
 2 immaterial details regarding the payments she purportedly received. SAC ¶¶ 65–66.
 3 She alleges that her “venue pay” was paid as “\$700 per day at The Forum, in cash,”
 4 from someone she claims with no basis whatsoever was “an accountant for the
 5 Azoff Entities by the name of John Dalton.” *Id.* ¶ 65. Plaintiff also alleges that
 6 “Dolan’s tour manager Annie Bloom” separately wired her \$8,400 in payment for
 7 the Los Angeles tour leg. *Id.* ¶ 66. These allegations, even assuming they are true,
 8 do not establish any causal connection between the payments and Plaintiff’s sexual
 9 conduct with Dolan.

10 Plaintiff repeats prior allegations that she received these payments “even
 11 though she performed almost no massages when at The Forum,” concluding that the
 12 payments therefore must have been made so that she “would be available when
 13 [Dolan] wanted to see her and have sex with her.” *Id.* ¶¶ 65–66. But there is no
 14 support for this conclusory assumption. Plaintiff’s own allegations acknowledge
 15 that she went to the venue on concert days, was given a room at the venue and made
 16 herself available for massages, and did in fact perform massages at the venue. *Id.*
 17 ¶¶ 51, 60, 65–66. No one could have known how many tour members would
 18 actually request massages, nor is there any reasonable basis to infer that the
 19 payments for Plaintiff’s availability and massage services were in fact pretextual
 20 payments for sex with Dolan.

21 Plaintiff also adds allegations attempting to show promises of career
 22 advancement, alleging that Dolan “suggested that [Plaintiff] would have
 23 opportunities for more work through him” and that “he would make sure she would
 24 be invited to Europe” for the tour’s European leg. *Id.* ¶¶ 39, 45. Again, there is
 25 little new in these allegations, as Plaintiff’s existing allegations claimed that Dolan
 26 made “assertions that he would take care of her” by virtue of his “immense power
 27 over everyone’s position on the tour—including hers.” *Id.* ¶ 43. This still “fails to
 28 allege a commercial sex act premised on alleged promises of career advancement,”

1 because nothing suggests that Dolan’s alleged statements—for which Plaintiff
 2 provides no supporting details—were made to “entice, lure or coerce” Plaintiff “into
 3 a sexual relationship. Dkt. 63 at 8; *see also Doe v. Fitzgerald*, 2022 WL 2784805,
 4 at *5 (C.D. Cal. May 13, 2022) (plaintiff “fail[ed] to allege that a commercial sex
 5 act occurred” where nothing showed alleged “‘things of value’” were “offered in
 6 exchange for a sex act”).

7 Plaintiff has thus offered no facts to support her conclusory allegation that her
 8 sexual encounters with Dolan were “commercial sex acts.” SAC ¶ 119.⁴ On this
 9 ground alone, her TVPRA claim against the Azoff Entities fails.

10 **B. Plaintiff fails to allege facts showing that the Azoff Entities knew or**
 11 **should have known of any sex trafficking scheme.**

12 Plaintiff’s FAC also “fail[ed] to plausibly allege that [the Azoff Entities]
 13 knew or should have known that Dolan was engaged in any sex trafficking in
 14 violation of the TVPRA.” Dkt. 63 at 9. In the SAC, Plaintiff’s core factual
 15 allegations regarding the Azoff Entities are the same: (a) that the Azoff Entities
 16 arranged her travel to Los Angeles, which Dolan was paying for on the “JD credit
 17 card”; (b) that representatives of the Azoff Entities transported her between the hotel
 18 and the venue; (c) that she stayed in the same hotel as Dolan’s band, rather than the
 19 same hotel as the Eagles, as she had done on prior tour legs; and (d) that, even
 20 though she was paid to be available for massages, few tour members ultimately
 21 signed up for one. SAC ¶¶ 47–51, 58, 60–61.

22
 23 ⁴ Plaintiff also alleges that “Dolan received sexual gratification from these sex acts,”
 24 which she claims “is also a ‘thing of value’ within the meaning of 18 U.S.C. §
 25 1591(e)(3).” *Id.* ¶ 119. But under the law, a “sex act” is something done “for sexual
 26 gratification.” *Acevedo*, 2024 WL 650189, at *13 (quotations omitted) (collecting
 27 cases). Under Plaintiff’s definition, any sex act would be a “commercial” sex act,
 28 rendering the statute’s use of the word “commercial” superfluous. For that reason,
 courts have expressly held that “sexual gratification alone is insufficient to create a
 ‘commercial’ sex act.” *Fitzgerald*, 2022 WL 2784805, at *3.

1 The limited additions to Plaintiff’s SAC do not save her claim for beneficiary
 2 liability. Plaintiff adds an allegation that, consistent with the lodging arrangements,
 3 on prior tour legs, she “traveled and ate her meals” with members of the Eagles,
 4 whereas in Los Angeles, she “barely saw” them. *Id.* ¶ 59. And, as noted above,
 5 Plaintiff introduces the allegation (which, if necessary, will be shown to be untrue)
 6 that the “venue pay” she received was paid as \$700 cash for each day she went to
 7 the venue, paid by a purported accountant for the Azoff Entities, John Dalton. *Id.*
 8 ¶ 65. She also adds a duplicative allegation that Dolan “authorized” the Azoff
 9 Entities to transport her to California at Dolan’s expense “on the ‘JD credit card’” so
 10 that she would be available for sex with him. *Id.* ¶ 66. Thus, because “Dolan or his
 11 band was paying for [Plaintiff’s] presence” in Los Angeles, in contrast to prior legs
 12 in which “the Azoff Entities paid for her travel and lodging,” Plaintiff alleges the
 13 Azoff Entities “must have known” that Plaintiff’s presence “was specifically
 14 requested by Dolan.” *Id.* ¶ 53.

15 Even with these additions, Plaintiff’s SAC is wholly devoid of any facts
 16 plausibly suggesting the Azoff Entities knew or had reason to know Dolan was
 17 allegedly using fraud or coercion to obtain sex. Plaintiff still has no allegations
 18 “that she ever disclosed Dolan’s previous sexual assaults to the Azoff Defendants,
 19 or to anyone for that matter.” Dkt. 63 at 9; *cf. Acevedo*, 2024 WL 650189, at *20–
 20 21 (defendants knew or should have known of sex trafficking given that victims had
 21 reported their sexual assaults and posted about them on social media); *Doe I v.*
 22 *Deutsche Bank Aktiengesellschaft*, 671 F. Supp. 3d 387, 407–08 (S.D.N.Y. 2023)
 23 (bank had constructive knowledge where internal departments “alerted management
 24 about [Jeffrey] Epstein’s sex trafficking” and senior executives personally
 25 “observed victims in Epstein’s home”). Even accepting Plaintiff’s allegation that
 26 the Azoff Entities “must have known” that Plaintiff’s presence in Los Angeles was
 27 “specifically requested by Dolan,” SAC ¶ 53, there is nothing to suggest that the
 28

1 Azoff Entities had reason to suspect that Dolan’s request was for the purpose of
2 sexually exploiting Plaintiff.

3 Indeed, Plaintiff’s allegations remain far more tenuous than those in cases
4 dismissed for failure to state a TVPRA claim. For example, in *Eckhart v. Fox News*
5 *Network, LLC*, 2021 WL 4124616 (S.D.N.Y. Sept. 9, 2021), the plaintiff’s
6 allegations that Fox News was “well aware” that one of its anchors had had an
7 affair, completed a sex addiction treatment program, “flirted with younger women in
8 the office,” and was a “serial harasser,” may well have “put Fox News on notice that
9 [the anchor] was engaged in sexual harassment,” they were nonetheless “insufficient
10 to establish that Fox News knew or should have known that [the anchor] was
11 *specifically engaged in sex trafficking.*” *Id.* at *11 (quotations omitted) (emphasis
12 added). Similarly, in *Doe by Doe v. Piraino*, 688 F. Supp. 3d 635 (M.D. Tenn.
13 2023), allegations that a fencing coach “had allegedly groped an adult woman” on
14 one occasion, engaged in “belligerent and unethical behavior at fencing
15 tournaments,” and had been arrested for public intoxication “may have put [USA
16 Fencing] on notice that [the coach] was generally a bad guy and a poor ambassador
17 for the sport, but not that he was engaged in acts that constituted [] sex trafficking.”
18 *Id.* at 651 (quotations omitted); *see also J.B. v. G6 Hosp., LLC*, 2020 WL 4901196,
19 *10 (N.D. Cal. Aug. 20, 2020) (“Significantly, while Plaintiff’s allegations suggest
20 that Economy Inn quite possibly should have been aware of some nefarious conduct,
21 they do not suggest that Economy Inn should have known that the venture
22 constituted sex trafficking.”). Here, Plaintiff offers no factual allegations to show
23 that the Azoff Entities had knowledge of *any* sort of misconduct by Dolan—not
24 even the harassing or abusive behaviors that were insufficient to state a claim in
25 *Piraino* and *Eckhart*—let alone that Dolan allegedly intended to sexually exploit
26 Plaintiff.

27 Like the FAC, the SAC fails to connect the Azoff Entities to the alleged
28 sexual assault by Weinstein in Los Angeles that is the centerpiece of Plaintiff’s

lawsuit. Plaintiff again alleges that Dolan “fraudulently coordinate[d]” the meeting between her and Weinstein, SAC § I.V—a conclusory assertion with no supporting facts besides that the two were friends and that Dolan mentioned having a great massage therapist to Weinstein, *id.* ¶ 76—but even if accepted as true, Plaintiff has no facts that the Azoff Entities had actual or constructive knowledge of such a scheme by Dolan. *See id.* ¶¶ 73–81.

For these reasons, Plaintiff still has not alleged—and cannot allege—facts that could plausibly show the Azoff Entities knew or should have known she was brought to Los Angeles to engage in a commercial sex act in violation of the TVPRA. On that additional ground, Plaintiff’s TVPRA claim against the Azoff Entities fails.

C. Plaintiff fails to allege facts showing that the Azoff Entities are vicariously liable for Dolan’s conduct.

Plaintiff’s last resort is to rely on an untenable assertion that the Azoff Entities are vicariously liable for Dolan’s alleged conduct.

“Ninth Circuit courts apply common law agency principles from the Restatement” to TVPRA claims. *J.C. v. Choice Hotels Int’l, Inc.*, 2020 WL 6318707, at *8 (N.D. Cal. Oct. 28, 2020). An agency relationship requires “a manifestation by the principal that the agent shall act for him,” the “accept[ance] [of] the undertaking” by the agent, and “an understanding” that “the principal is to be in control of the undertaking.” *B.J. v. G6 Hosp., LLC*, 2023 WL 6120682, at *9 (N.D. Cal. Sept. 18, 2023) (citing Restatement (Third) of Agency § 1.01 (2006)) (quotations omitted). And for a principal to be vicariously liable, the principal (here, the Azoff Entities) must have “sufficient authority to control the actions” of the agent (here, Dolan). *Id.* (citing Restatement (Third) of Agency § 7.07 cmt. f (principal must “control[] or ha[ve] the right to control the manner and means through which the agent performs work.”)).

1 Plaintiff's FAC "[did] not sufficiently allege an agency or vicarious liability
2 theory" that would permit attribution of Dolan's conduct to the Azoff Entities. Dkt.
3 63 at 9–10. Plaintiff's SAC adds several paragraphs attempting to address this
4 deficiency, SAC ¶¶ 39, 122–25, but none provides a cure.

5 For one, several of these "new" allegations simply rehash points from
6 Plaintiff's prior allegations. Plaintiff alleges that "Dolan founded and closely
7 managed Defendant the Azoff Company LLC," which "engaged in a joint venture"
8 with Defendant Azoff Company Holdings, LLC to reopen The Forum and
9 "organize[] the Eagles 2014 Tour," giving Dolan "significant managerial discretion"
10 over the joint venture, "including personnel matter." *Id.* ¶¶ 122–23. And she claims
11 "Dolan assured her that he would make sure she would be invited to Europe" for the
12 European tour leg, "demonstrating that he could control the Azoff Entities' decision-
13 making about the tour." *Id.* ¶ 39. But there is nothing new about these
14 allegations—Plaintiff previously asserted that Dolan jointly founded Azoff MSG
15 Entertainment, LLC (which later became the Azoff Company LLC) in September
16 2013 to reopen The Forum and that Dolan "controlled the purse strings" and "had
17 profound power over everyone involved in the venue and the tour." *Id.* ¶¶ 54, 57.

18 The remainder of these "new" allegations are conclusions devoid of factual
19 support. Plaintiff alleges that "when Dolan arranged through the Azoff Entities to
20 have [Plaintiff] transported to California," he intended to "use fraud, force, and
21 coercion to induce her into commercial sex acts," thus "act[ing] in his capacity as an
22 agent when he violated the Trafficking Victims Protection Act" and making the
23 Azoff Entities "vicariously liable for his conduct." *Id.* ¶¶ 124–25. These
24 conclusions are not entitled to a presumption of truth and are properly disregarded in
25 analyzing the sufficiency of Plaintiff's claim. *See Sprewell*, 266 F.3d at 988.

26 In any case, none of Plaintiff's allegations shows any agreement that Dolan
27 would act for the Azoff Entities, nor that the Azoff Entities "had the right to control
28 the manner and means" of Dolan's work so as to permit imposition of vicarious

1 liability. Restatement (Third) of Agency § 7.07 cmt. f. Indeed, if anything,
 2 Plaintiff’s allegations about Dolan’s purported influence over the Azoff Entities
 3 directly dispel that notion. *See Sprewell*, 266 F.3d at 988 (plaintiff can “plead
 4 himself out of a claim” by alleging “details contrary to his claims”); *cf. J.C.*, 2020
 5 WL 6318707, at *8–9 (plaintiff alleged that “principal exercise[d] sufficient control
 6 over an agent’s work to establish vicarious liability”).

7 Moreover, even if Dolan were an agent, the Azoff Entities would still not be
 8 vicariously liable for Dolan’s alleged sexual misconduct. A principal is only
 9 vicariously liable for an agent’s tortious conduct within the scope of their
 10 employment, not conduct that solely furthers “the employee’s own
 11 purposes.” Restatement (Third) of Agency § 7.07 cmt. b. Under the “adverse
 12 interest exception,” a “rogue agent’s actions or knowledge are not imputed to the
 13 principal if the agent acts adversely to the principal” and acts “solely for the agent’s
 14 own purposes.” *In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d 471, 476 (9th
 15 Cir. 2015) (quotations omitted). Thus, the court in *Piraino* concluded that the
 16 fencing coach’s alleged sex trafficking could not be attributed to his employer, USA
 17 Fencing, because that conduct was solely for his own purposes, outside the scope of
 18 his authority. 688 F. Supp. 3d at 652 (relying on adverse interest exception). By the
 19 same token, the alleged misconduct by Dolan—undertaken solely for his own
 20 benefit and conferring no benefit on the Azoff Entities—is not attributable to the
 21 Azoff Entities, and the SAC contains nothing to change that conclusion.

22 **D. Plaintiff’s TVPRA claim should be dismissed with prejudice.**

23 Plaintiff has already had more than enough chances to plead the essential
 24 facts of a TVPRA claim against the Azoff Entities: *first*, after the Azoff Entities
 25 identified the factual and legal deficiencies in Plaintiff’s draft complaint before the
 26 commencement of this action; *second*, in her FAC filed in response to the Azoff
 27 Entities’ motion to dismiss the original Complaint; and *third*, in the SAC filed after
 28

1 the Court dismissed the FAC with leave to amend. This is Plaintiff's fourth bite at
2 the apple, and her pleading fails again. Further amendment would thus be futile.

3 A court's discretion to deny leave to amend is "particularly broad where
4 plaintiff has previously amended the complaint." *Ascon Props., Inc. v. Mobil Oil*
5 *Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989); *see also Abagninin v. AMVAC Chem.*
6 *Corp.*, 545 F.3d 733, 742 (9th Cir. 2008) (dismissal with prejudice warranted where
7 "previous amendment failed to cure [the] deficiency" in allegations). The Court
8 already provided Plaintiff with "one last opportunity to state a viable claim." Dkt.
9 63 at 10. Plaintiff has failed to do so—demonstrating she *cannot* do so—and
10 dismissal with prejudice is thus warranted. *See Salameh v. Tarsadia Hotel*, 726
11 F.3d 1124, 1133 (9th Cir. 2013) ("[d]ismissal without leave to amend is proper if it
12 is clear that the complaint could not be saved by amendment") (quotations omitted).

13 **V. CONCLUSION**

14 For the foregoing reasons, the Court should grant the Azoff Entities' motion
15 and dismiss Plaintiff's first cause of action against the Azoff Entities without leave
16 to amend.

17
18 DATED: July 22, 2024

O'MELVENY & MYERS LLP

19
20 By: /s/ Daniel M. Petrocelli
21 Daniel M. Petrocelli
22 Attorneys for Defendants Azoff Entities
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the Azoff Entities, certifies that this brief contains 4,952 words, which complies with the word limit of Local Rule 11-6.1.

DATED: July 22, 2024

By: /s/ Daniel M. Petrocelli
Daniel M. Petrocelli